

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
LUTHER R. MUNOZ, JR.,

JUDGE CASTEL

Plaintiff(s),

NOTICE OF REMOVAL

-against-

Docket No.:

JUAN S. PEREZ-GUILLEN and NEW ENGLAND
MOTOR FREIGHT, INC.,

08 CIV 7342

Defendant(s).
-----x

To: THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

This Notice of Removal on behalf of defendants JUAN S. PEREZ-GUILLEN and NEW ENGLAND MOTOR FREIGHT, INC. respectfully shows:

NEW ENGLAND MOTOR FREIGHT, INC. respectfully shows:

1. On or about July 2, 2008 an action was commenced against defendants Juan S. Perez-Guillen and New England Motor Freight, Inc. (collectively "the defendants") in the Supreme Court of the State of New York, Bronx County for One Million Dollars (\$1,000,000.00), which action is entitled above. *Copies of the Summons and Verified Complaint are attached hereto and marked as Exhibit "A"*. On or about July 31, 2008, the defendants became aware of the Summons and Verified Complaint which defendant New England Motor Freight, Inc. received from plaintiff's counsel by Certified Mail¹. *Copy of mailing envelope is attached hereto as Exhibit "B"*.

2 The above described action is one in which this Court has original jurisdiction under the provisions of 28 U.S.C. §1332 and is one which may be removed to this Court by petitioner, pursuant to the provisions of 28 U.S.C. §1441 in that the matter

¹ New England Motor Freight, Inc. is also in possession of a receipt indicating that the Complaint was served on the State of New York, Department of State on July 23, 2008, which receipt is also annexed to Exhibit "A".

in controversy allegedly exceeds the sum or value of \$75,000.00 exclusive of interest and costs.

3. As set forth in the summons, plaintiff is a citizen of New York and resident of Bronx County. Defendant NEW ENGLAND MOTOR FREIGHT, INC. was, and at the time this action was commenced, and still is, a corporation organized under the laws of the State of New Jersey and having its principal office at 1-71 North Avenue East, Elizabeth, New Jersey 07201. Defendant JUAN S. PEREZ-GUILLEN, as alleged in the Complaint, was and still is, upon information and belief, a resident of the State of New Jersey.

4. There have been no proceedings held in the Supreme Court of the State of New York-Bronx County with regard to this matter, and no additional records. No responsive pleadings have been filed or served by the Defendants.

WHEREFORE, defendants requests that this action now pending against it in the Supreme Court of the State of New York, Bronx County, be removed therefrom to this Court.

Dated: Lake Success, New York
August 14, 2008

Yours etc.,

ABRAMS, FENSTERMAN,
FENSTERMAN, EISMAN, GREENBERG,
FORMATO & EINIGER, LLP

BY: 

TODD C. RUBENSTEIN (TR-8884)

Attorneys for Juan Perez-Guillen and New
England Motor Freight, Inc.

1111 Marcus Avenue
Suite 107

Lake Success, New York 141042
516-328-2300

TO: ALEXANDER BESPECHNY
Attorneys for Plaintiff
Luther R. Munoz, Jr.
2931 Westchester Avenue
Suite 200
Bronx, NY 10461

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

LUTHER R. MUNOZ, JR.,

Plaintiff,
-against-

JUAN S. PEREZ-GUILLEN and NEW ENGLAND
MOTOR FREIGHT INC.,

Defendants,

X
Index No.: 308562-08

Filed: 7/26/08

Plaintiff designated
BRONX County as the
place of trial

SUMMONS


The basis of venue is
Plaintiff's place of residence at:
640 Mead Street
Bronx, NY 10460

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service of this summons, or within 30 days after service of this summons is complete if this summons is not personally delivered to you within the State of New York.

In case of your failure to answer this summons, a judgment by default will be taken against you for the relief demanded in the complaint, together with the costs of this action.

Dated: Bronx, New York
June 3, 2008


Alexander Bespechny
Attorneys for Plaintiff
LUTHER R MUNOZ, JR.
2931 Westchester Avenue - Suite 200
Bronx, NY 10461
(718) 792-4800

RECEIVED
08 JUL -2 PM 4: 08
COUNTY CLERK
BRONX COUNTY

TO: JUAN S. PEREZ-GUILLEN
281 Goodwill Street
Perthamboy, New Jersey 08861

NEW ENGLAND MOTOR FREIGHT
CARRIER IND. INC.
1-71 North Avenue East
Elizabeth, New Jersey 07201

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

_____ X Index No.: **205560-08**
LUTHER R. MUNOZ, JR.,

Plaintiff,
-against-

VERIFIED COMPLAINT

**JUAN S. PEREZ-GUILLEN and NEW ENGLAND
MOTOR FREIGHT INC.,**

Defendants,
_____ X

STATE OF NEW YORK)
) s.s.:
COUNTY OF BRONX)

Plaintiff(s) by her attorney, **ALEXANDER BESPECHNY, ESQ.**, as and for his **VERIFIED COMPLAINT**, respectfully allege, upon information and belief:

1. The Plaintiff, **LUTHER R. MUNOZ JR.**, at all times herein mentioned was and still is a resident of the County of Bronx, State of New York.
2. Upon information and belief, the Defendant, **JUAN S. PEREZ-GUILLEN**, at all times herein mentioned was and still is a resident of the State of New Jersey.
3. Upon information and belief the Defendant, **NEW ENGLAND MOTOR FREIGHT INC.**, at all times herein mentioned was and still is a Corporation duly organized and existing under and by virtue of the laws of the State of New Jersey.
4. Upon information and belief the Defendant, **NEW ENGLAND MOTOR FREIGHT INC.**, at all time herein mentioned was and still is a partnership organized and doing business under and by virtue of the laws of the State of New Jersey.

5. Upon information and belief the Defendant, **NEW ENGLAND MOTOR FREIGHT INC.**, at all times herein mentioned was and still is a sole proprietorship organized and doing business under and by virtue of the laws of the State of New Jersey.
6. On or about February 2, 2007, Defendant, **JUAN S. PEREZ-GUILLEN**, was the operator of a certain automobile bearing the license plate number **AC436V** as issued by the State of New Jersey with the knowledge and/or consent of the owner.
7. On or about February 2, 2007, Defendant, **NEW ENGLAND MOTOR FREIGHT INC.**, was the owner of a certain automobile bearing the license plate number **AC436V** as issued by the State of New Jersey.
8. On or about February 2, 2007, Plaintiff, **LUTHER R. MUNOZ, JR.**, was the operator and owner of a certain automobile bearing the license plate number **535I78** as issued by the State of New York.
9. On or about February 2, 2007, at approximately 8:45 a.m., the automobile operated **FREIGHT INC.**, came into contact with the vehicle operated and owned by plaintiff, **LUTHER R. MUNOZ, JR.** in front of 1309 Metropolitan Avenue at the intersection of Hugh Grant Circle and McGraw Avenue in the County of Bronx, State of New York.
10. The negligence of the Defendant, **JUAN S. PEREZ-GUILLEN**, consisted of his/her negligent ownership, operation, maintenance and control of his/her motor vehicle; in operating his/her motor vehicle at an excessive rate of speed under the circumstances then and there prevailing; in failing to stop; in failing to slow down; in operating his/her motor vehicle in a state of disrepair; in failing to keep his/her motor vehicle under proper control; in operating his/her motor vehicle in a dangerous and reckless manner; in failing to keep a proper lookout; in failing to give warning of his/her

approach; in failing to observe the traffic controls and rules of the road; in failing to make proper, timely and adequate use of the signal devices, brakes and other safety equipment; in disregarding and disobeying the applicable laws, statutes, ordinances, rules and regulations governing the movement of motor vehicle traffic at this time and place of the occurrence; and in being in all ways generally careless, reckless and negligent.


11. The negligence of the Defendant, **NEW ENGLAND MOTOR FREIGHT, INC.**, consisted of his/her negligent ownership, operation, maintenance and control of his/her motor vehicle; in operating his/her motor vehicle at an excessive rate of speed under the circumstances then and there prevailing; in failing to stop; in failing to slow down; in operating his/her motor vehicle in a state of disrepair; in failing to keep his/her motor vehicle under proper control; in operating his/her motor vehicle in a dangerous and reckless manner; in failing to keep a proper lookout; in failing to give warning of his/her approach; in failing to observe the traffic controls and rules of the road; in failing to make proper, timely and adequate use of the signal devices, brakes and other safety equipment; in disregarding and disobeying the applicable laws, statutes, ordinances, rules and regulations governing the movement of motor vehicle traffic at the time and place of the occurrence; and in being in all ways generally careless, reckless and negligent.
12. Solely as a result of the defendant's negligence, the Plaintiff(s) was caused to suffer severe and serious personal injuries to mind and body, and further the plaintiff was subjected to great physical pain and mental anguish.
13. As a result of the foregoing, the Plaintiff, **LUTHER R MUNOZ, JR.**, sustained serious personal injuries as defined in Section 5102(d) of the Insurance Law of the

State of New York, and/or economic loss greater than the basic economic loss as defined in Section 5102(a) of the insurance Law of the State of New York.

14. This action falls within one or more of the exceptions set forth in Article 1602 § (2), (iv), (5), (6), (7) and (11) of the Civil practice Law and Rules.
15. Due to defendants' negligence, Plaintiff **LUTHER R MUNOZ, JR.**, is entitled to damages in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

WHEREFORE, the Plaintiff demands a judgment awarding damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00) together with interest, costs and disbursements of this action and such other further relief as to this Court may deem just and proper.

Dated: Bronx, New York
June 3, 2008


Alexander Bespechny
Attorneys for Plaintiff
LUTHER R MUNOZ, JR.
2931 Westchester Avenue – Suite 200
Bronx, NY 10461
(718) 792-4800

TO: **JUAN S. PERE-GUILLEN**
281 Goodwill Street
Perthamboy, New Jersey 08861

**NEW ENGLAND MOTOR FREIGHT
CARRIER IND. INC.**
1-71 North Avenue East
Elizabeth, New Jersey 07201

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

LUTHER R. MUNOZ JR..

X

Index No.:

Plaintiff,

-against-

JUAN S. PEREZ-GUILLEN and NEW ENGLAND
MOTOR FREIGHT INC.,

VERIFICATION

Defendant.

X

STATE OF NEW YORK)
COUNTY OF BRONX)

S.S.:

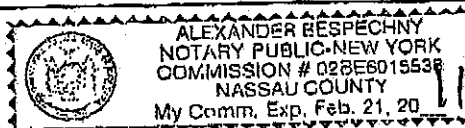
LUTHER R. MUNOZ JR. being duly sworn deposes and says that he/she is the plaintiff in the above-entitled action; that he/she has read the foregoing SUMMONS AND COMPLAINT, and knows the contents thereof and that the same is true to his/her knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, he/she believes them to be true.

Dated: JUNE 5th, 2008
~~Brooklyn~~ New York
Bronx

X. Luther R. Munoz Jr.

Sworn to before me this 5th
day of JUNE, 2008

[Signature]
Notary Public



Receipt, Summons Service (Vehicle)

Fee paid for service under:

☒ § 253 Veh. & Tr. Law
☐ § 254 Veh. & Tr. Law☐ § 74 Nav. Law
☐ § 250 G.B. Law (Alt)

DATE

07-23-08

Received (☐ cash ☒ other) the sum of TEN DOLLARS (\$10)

To be refunded \$

for summons served against New England Motor Freight Inc.in the case of Luther B. Munoz, Jr. (Plaintiff) VS. Juan S. Perez-Guillen (First Defendant)in Supreme Court, County of Bronx

NAME OF PLAINTIFF'S ATTORNEY

Alexander Bespechny

2931 Westchester Avenue - Ste. 200

Bronx, NY 10461

STATE OF NEW YORK
Secretary of StateBy D. Pukins

EXHIBIT B



JUL 31 2008
NAME _____
1st Notice _____
2nd Notice _____
Return _____

Ernie
Hardy

Personal & Confidential
New England Doctor Freight Car
171 North Avenue East

CERTIFIED MAIL[®]



7007 1490 0003 5256 3374



Box
8-0
1306

Ernie Hardy
171 North Avenue East
New England Doctor Freight Car

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LUTHER R. MUNOZ, JR.,

Plaintiff,

-against-

CERTIFICATE OF SERVICE

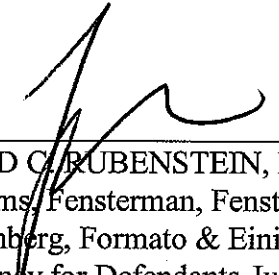
JUAN S. PEREZ-GUILLEN and NEW ENGLAND
MOTOR FREIGHT, INC.,

Civil Action No.: 08 CV 7342

Defendants.
-----X

I hereby certify that I have served a copy of the attached **CIVIL COVER SHEET; F.R.C.P. 7.1 STATEMENT OF DEFENDANT AND NOTICE OF REMOVAL WITH EXHIBITS "A" AND "B"; INDIVIDUAL PRACTICE RULES OF JUDGE P. KEVIN CASTEL, SENIOR U.S. DISTRICT JUDGE; UNITED STATES DISTRICT COURT ELECTRONIC CASE FILING RULES AND INSTRUCTIONS; AND INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE EATON** upon Alexander Bespechny, Esq., Attorneys for Plaintiff, whose address is, 2931 Westchester Avenue, Suite 200, Bronx, New York 10461 by Federal Express for delivery on Monday, August 25, 2008.

Dated: Lake Success, New York
August 22, 2008



TODD C. RUBENSTEIN, ESQ. (TR-8884)
Abrams, Fensterman, Fensterman, Eisman,
Greenberg, Formato & Einiger, LLP
Attorney for Defendants-Juan S. Perez-Guillen and
New England Motor Freight, Inc.
1111 Marcus Avenue, Suite 107
Lake Success, New York 11042
(516) 328-2300